

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
NORTHWESTERN DIVISION**

United States of America,)	
)	
Plaintiff,)	
)	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER FOR JUDGMENT
vs.)	
Mary A. Wells, a/k/a Mary Alice Wells, and Community Action Opportunities, a corporation,)	Case No. 4:07-cv-053
)	
Defendants.)	

The above-entitled matter came before the Court at Bismarck, North Dakota, on October 2, 2007, upon application of Drew H. Wrigley, United States Attorney for the District of North Dakota, and Kent Rockstad, Assistant United States Attorney, one of the attorneys for the plaintiff, for entry of default judgment as to the defendants, Mary A. Wells, a/k/a Mary Alice Wells, and Community Action Opportunities, Inc., a corporation. Evidence was adduced for and on behalf of the plaintiff in support of its application and no one appeared for or on behalf of the defendants.

The above-entitled action was commenced by the plaintiff acting under the direction of the Attorney General of the United States of America, and was brought under the provisions of 28 U.S.C. § 1345, against the above-named defendants; that the action was regularly and duly commenced by the filing of a complaint in the office of the Clerk of this Court; that the defendants, Mary A. Wells, a/k/a Mary Alice Wells, and Community Action Opportunities, Inc., a corporation, have been duly and regularly served with a complaint pursuant to the Federal Rules of Civil Procedure; and that the time for answering has expired as to the defendants and each of them has failed to appear or answer in these proceedings and is in default.

Now, upon the evidence adduced by the plaintiff and upon due consideration of the record, the Court makes the following:

FINDINGS OF FACT

1.

On or about March 2, 2000, Mary A. Wells, a/k/a Mary Alice Wells, for value received, made, executed and delivered to the United States of America her promissory note in writing, wherein she promised to pay to the United States of America the sum of \$27,200.00 plus interest on the unpaid balance at the rate of 7.375 percent per annum.

2.

To secure the balance due and owing on this promissory note, defendant Mary A. Wells, a/k/a Mary Alice Wells, of Mountrail County, North Dakota, made, executed and delivered to the plaintiff, United States of America, a real estate mortgage on or about March 2, 2000, wherein she granted, bargained, sold and conveyed by mortgage unto the United States of America, the following described real estate situated in the County of Mountrail, State of North Dakota:

Township 152 North, Range 89 West of the 5th P.M., Section 31: Outlot 2 of Govt.
Lot 1 of the NW $\frac{1}{4}$, Mountrail County, North Dakota.

This mortgage was recorded in the office of the County Recorder of Mountrail County, North Dakota, on March 3, 2000, as Document No. 303047.

3.

Defendant, Mary A. Wells, a/k/a Mary Alice Wells, has defaulted in the payment of the promissory notes, secured by the mortgage listed above, in that she has failed to make timely payments of principal and interest.

4.

Defendant, Mary A. Wells, a/k/a Mary Alice Wells, received \$7,461.70 in payment assistance of which the United States is entitled to recapture \$1,798.16.

5.

There is due and owing to the plaintiff by the defendant, Mary A. Wells, a/k/a Mary Alice Wells, principal in the sum of \$25,624.79, interest to the date of October 1, 2007, of \$2,676.87, abstracting, appraisal, fees, late charges and escrow funds in the principal sum of \$1,260.39, interest to the date of October 1, 2007, of \$40.24; and payment assistance recapture of \$1,798.16, together with costs and disbursements of this action amounting to \$512.75, making a total of \$31,913.20, as of October 1, 2007, plus prejudgment interest which accrues at a daily rate of \$5.4303 until the date of entry of judgment, with interest accruing after entry of judgment at the legal rate.

6.

By reason of the defaults in the conditions and covenants of the promissory note and real estate mortgage noted above, the plaintiff has declared the entire amount of the indebtedness as evidenced by the promissory note due and owing. All administrative and servicing actions have been completed and the United States has provided defendant Mary A. Wells, a/k/a Mary Alice Wells, with all the notices required by federal law.

7.

On or about June 30, 2007, the plaintiff served upon the defendant, Mary A. Wells, a/k/a Mary Alice Wells, residing at Parshall, North Dakota, and record owner of the property described above, by certified mail, a Notice of Intention to Foreclose Real Estate Mortgage, giving the date of the mortgage, the description of the mortgaged property, and the full amount due for principal and interest, and advised her that unless the full amount of the indebtedness was paid within thirty days

from the date of mailing said Notice, an action would be instituted for the foreclosure of the mortgage.

8.

On or about March 28, 2006, defendant Mary A. Wells, executed a Housing Rehabilitation Program Homeowner Agreement with Defendant, Community Action Opportunities, Inc., whereby Defendant Community Action Opportunities, Inc., may have provided the sum of \$12,000.00 to defendant Mary A. Wells. The Agreement was recorded in the office of the County Recorder, Mountrail County, North Dakota, on May 16, 2006 as Docket No. 321681. This Agreement is junior and subordinate to the mortgage of the plaintiff, United States of America.

9.

The defendant, Mary A. Wells, a/k/a Mary Alice Wells, is not in the Armed Forces of the United States.

CONCLUSIONS OF LAW

1.

The Court has jurisdiction of the subject matter of this action and the parties.

2.

The defendants have been duly and regularly served in this action according to law.

3.

There is due and owing to the plaintiff by the defendant, Mary A. Wells, a/k/a Mary Alice Wells, principal in the sum of \$25,624.79, interest to the date of October 1, 2007, of \$2,676.87, abstracting, appraisal, fees, late charges and escrow funds in the principal sum of \$1,260.39, interest to the date of October 1, 2007, of \$40.24; and payment assistance recapture of \$1,798.16, together

with costs and disbursements of this action amounting to \$512.75, making a total of \$31,913.20, as of October 1, 2007, plus prejudgment interest which accrues at a daily rate of \$5.4303 until the date of entry of judgment, with interest accruing after entry of judgment at the legal rate.

4.

That if the foreclosure proceeds distributed to the United States are less than the balance due and owing by defendant Mary A. Wells a/k/a Mary Alice Wells on the amount due and owing under the promissory note, the United States is granted the right to collect such deficiency balance from defendant Mary A. Wells a/k/a Mary Alice Wells.

5.

The plaintiff has a first valid, paramount and subsisting lien upon the real estate described in the complaint and the Findings of Fact herein and the plaintiff is entitled to the foreclosure of its real estate mortgage and to have the real estate sold and the proceeds of the sale applied to the indebtedness described above set forth against the defendant, Mary A. Wells a/k/a Mary Alice Wells.

6.

The Housing Rehabilitation Program Homeowner Agreement of the defendant, Community Action Opportunities, Inc., is junior and subordinate to the above referenced real estate mortgage of the plaintiff, United States of America.

7.

The defendant, Mary A. Wells, a/k/a Mary Alice Wells, has no further interest in the above described real estate.

ORDER FOR JUDGMENT

Let judgment be entered accordingly.

Dated this 3rd day of October, 2007.

/s/ Daniel L. Hovland

Daniel L. Hovland, Chief Judge
United States District Court